IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Manoj Mittal & Anr. Versus State of Rajasthan & Anr.

S.B. Criminal Misc. Petition No. 802/2003 for quashing the FIR No.261/2003, Police Station, Hanumangarh Town, for the offences under Section 420 & 120-B, IPC.

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Date of Order: December 04, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. H.S. Sandhu, for the petitioners.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.
Mr. M.K. Garg and Mr. Niranjan Singh, for non-petitioner No.2.

BY THE COURT:

By the instant criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short,"the Code" hereinafter), the petitioners seek quashing of FIR No.261/2003, Police Station, Hanumangarh Town, for the offences under Sections 420 and 120-B, IPC.

I have heard learned counsel for the parties. Carefully gone through the averments made in the FIR.

It is contended by the learned counsel for the petitioners that mainly due to dishonour of the cheque on account of insufficient fund to the account of the petitioner No.1,

the offences under Sections 420 and 120-B, IPC are not made out and the only remedy available to the complainant/non-petitioner No.2 is to proceed under Section 138 of the Negotiable Instruments Act, 1881 (for short, "the Act" hereinafter). He has relied on a decision of the Hon'ble Supreme Court in G. Sagar Suri & Anr. Vs. State of U.P. & ors., (2000) 2 SCC 636; and a decision of this Court in Subhash Chandra & ors. Vs. State of Rajasthan & Anr., 2001 (1) R.Cr.D. 503 (Raj.). Learned counsel further contended that there is no evidence that right from the inception, the petitioners had no intention to pay the cheque amount and the complainant/non-petitioner No.2 was induced with fraudulent and dishonest intention to part with the money against the cheque issued by the petitioner No.1 and, therefore, subsequently if the petitioner failed to make up the promise, the offences under Section 420 and 120-B, IPC are not made out. Learned counsel has relied on the decisions of the Hon'ble Supreme Court in Anil Mahajan Vs. Bhor Industries Ltd. & Anr., (2005) 10 SCC 228; Hotline Teletubes & Components Ltd. & Anr. Vs. State of Bihar & Anr., (2005) 10 SCC 261; Uma Shankar Gopalika Vs. State of Bihar & Anr., (2005) 10 SCC 336; K.C. Builders & Anr. Vs. Assistant Commissioner of Income Tax, (2004) 2 SCC 731; and Alpic Finance Ltd. Vs. P. Sadasivan & Anr., (2001) 3 SCC 513. Learned counsel has also relied on the decisions in P. Eswara Reddy Vs. State of Andhra Pradesh, 1986

Cri.L.J. 207 (A.P.); Nagarajan Vs. Jinnath Saheb, 1986 Cri.L.J. 483 (Mad.); and V.V.L.N. Chary & ors. Vs. N.A. Martin & ors., 1983 Cri. L.J. 106 (Kerala).

Learned counsel for the complainant/non-petitioner No.2 submits that if from the averments made in the FIR, the essential ingredients of the offences under Sections 420 and 120-B, IPC are made out then at the stage of investigation, the FIR cannot be quashed. He has relied on the decisions of this Court in Sanjay Kumar Modi Vs. State of Rajasthan & Anr., S.B. Criminal Revision Petition No. 744/2003 etc.; Vishnu Purohit Vs. State of Rajasthan, 2005 (2) R.Cr.D. 76 (Raj.); and Dinesh Lodha Vs. State of Rajasthan & Anr., RLW 2003 (2) Raj. 1320.

In the FIR lodged by the complainant/non-petitioner No.2, it is alleged that the petitioners and complainant/non-petitioner No.2 had a good relation; the petitioners were the tenants in the premises of the father of complainant/non-petitioner No.2; they have been living together in the same compound for years together and, therefore, they were having thick relations. On 22-2-2001, the petitioner No.1, along with his wife (petitioner No.2) came to the non-petitioner No.2 at his Show Room situated in Hanumangarh Town and requested him for advancing a sum of Rs. One lac and this amount was given by the complainant/non-petitioner No.2 to the petitioner No.1, against which the petitioner No.1 issued a cheque No.371306 of

State Bank of Patial, Hanumangarh Town Branch and agreed to repay the loan amount from the said cheque. On being induced by the petitioner No.1, the complainant/non-petitioner No.2 parted with the amount as noticed above. However, subsequently the complainant requested the petitioner to return the loan amount. In the meanwhile, the petitioner vacated the rented premises and went to Sirsa (Haryana). The cheque issued by the petitioner No.1 was presented to be bank for its encashment, however, it was dishonoured on account of insufficient fund to the account the drawer. The complainant came to know that right from the very beginning, the petitioner No.1 had no intention to repay the loan amount and the complainant was dishonestly and fraudulently induced to pay the amount of Rs. One lac as against the cheque issued by the petitioner No.1. The petitioner, knowing it well that there is no amount in his account and he is not going to arrange the said amount of cheque in future and as such he committed the offence of cheating.

On careful perusal of the FIR, in my view, so far as petitioner No.2 Manju Mittal is concerned, there is no specific allegation against her that she conspired for cheating. Even assuming that at the time of taking the amount from the complainant/non-petitioner No.2 by the petitioner No.1, she went to the Show Room of the complainant along with her

husband petitioner No.1, still it cannot be said that she had any criminal intent to commit the offence, including the offence of criminal conspiracy. But so far as petitioner No.1 Manoj Mittal is concerned, all the transactions were made by him. It was he who fraudulently and dishonestly induced the complainant to part with the amount with an intention not to return the amount, as also with the intention that the cheque which he is going to issue against the said amount has to be dishonoured since there was no amount to the credit of his bank account. This fact was known to the petitioner No.1 right from the inception. Therefore, so far as petitioner No.1 is concerned, prima facie the offence of cheating is made out against him.

This Court, in Subhash Chandra & ors. Vs. State of Rajasthan (supra), while examining the case challenging the order taking cognizance for the offences under Sections 420, 506 and 120-B, IPC and Section 138 of the Act, held that the proceedings under Sections 420, 506 and 120-B, IPC cannot be said to be simultaneously maintainable with the proceedings under Section 138 of the Act. The issue involved is basically dishonouring of the cheque and, therefore, in the facts and circumstances of the case, when proceedings under Section 138 of the Act are already pending, it would not be in the interest of justice to continue the proceedings for the offences under Sections 420, 506 and 120-B, IPC.

In G. Sagar Suri & Anr. Vs. State of U.P. & ors. (supra), the Hon'ble Supreme Court held that criminal proceedings are not short cut of other remedies availablein law. Before issuing process a criminal court has to exercise a great deal of caution. It was further held that the finance company also advances short-term loans. In that case it is essentially a commercial transaction. After the first two cheques were dishonoured, two cheques were again issued, which again were dishonoured resulting in filing of complaint under Section 138 of the Act. None of the respondents has been able to explain as to why offences under Sections 406/420 IPC were not added in the complaint filed under Section 138 of the Act and why resort was had to filing of a separate first information report.

In Dinesh Lodha Vs. State of Rajasthan & Anr. (supra), this Court held that the investigation to an offence is a statutory function of the police and the superintendence thereof is vested in the State Government and the Court is not justified without any compelling and justifiable reason to interfere with the investigation. Thus where the investigation which is still on its way and the further investigation in the offence is legally permissible as contemplated by Section 173 (8) of Cr.P.C., the quashing of investigation by the High Court would not be permissible.

In Sanjay Kumar Modi Vs. State of Rajasthan & ors.

(supra) and Vishnu Purohit Vs. State of Rajasthan, (2005) 2 R.Cr.D. 76 (Raj.), this Court held that to rope an accused for cheating due to cheque drawn and issued by him and later bounced on account of closure of account, initial dishonest intention at the time of issuing the cheque is sine qua non. In a case of dishonour of cheque, for constituting an offence under Section 420 IPC, it is essential that there must be an element of deception in the transaction. To deceive is to induce a man to believe that a thing is true which is actually false and which person practising the deceit knows or believes to be false. It must also be shown that there exists a fraudulent and dishonest intention at the time of commission of the offence.

In the instant case, as noticed above, right from the inception, the petitioner No.1 had a dishonest and fraudulent intention inducing the complainant/non-petitioner to part with a sum of Rs. One lac against a cheque knowing it well that he has no amount to his bank account, for which he issued the cheque and thus, prima facie he practised the deception with a fraudulent and dishonest intention. The decisions relied on by the learned counsel for the petitioners turn on their own facts. Keeping in view the decision of this Court in Vishnu Purohit Vs. State of Rajasthan (supra) and the facts emerging on record, in my view, prima facie there is a ground to proceed against petitioner No.1 Manoj Mittal for the offences noticed above.

However, there being no material, even if remained uncontroverted, constituting the offence against petitioner No.2 Smt.Manju Mittal. In this view of the matter, I do not find any ground to quash the FIR qua petitioner No.1 Manoj Mittal. However, there being no essential ingredients for constituting the offence against petitioner No. 2 Smt. Manju Mittal, allowing FIR to conntiue against her is nothing but an abuse of the law.

In this view of the matter, the criminal misc. petition filed by petitioner No.2 Smt. Manju Mittal is allowed and the FIR No.261/2003, Police Station, Hanumangarh for the offences under Sections 420-B and 120-B, IPC, qua petitioner No.2 Smt. Manju Mittal, stands quashed. However, the criminal miscellaneous petition filed by petitioner No.1 Manoj Mittal seeking quashing of the FIR stands dismissed. The stay petition filed by petitioner No.1 Manoj Mittal is dismissed and the stay petition filed by petitioner No.2 Smt. Manju Mittal stands disposed of.

(H.R. PANWAR), J.

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